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HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (S) NO. 2632 of 2005

Petitioner Jaideep Yadav, S/o Ghasiram Yadav, aged 28 years, Resident of Bazarpara, Dharamjaigarh, Distt. Raigarh.

Versus

Respondents

1. State of Madhya Pradesh, through the Secretary, Government of M.P. School Education Department, Mantralaya, Bhopal.
2. The Joint Director, Public Instructions, Bilaspur Division, Bilaspur
3. The Chief Executive Officer, Jila Panchayat-cum-Addl. Director School Education, Raigarh

Single Bench :- Hon'ble Shri Justice Satish K. Agnihotri

Present :- Mr. A.K. Prasad, Advocate for the Petitioner.
Mr. V.V.S. Murthy, Deputy Advocate General with Ms. Deepali Pandey, Panel lawyer for the respondents/State.

ORDER
(Passed on this 2nd day of May, 2007)

1. Learned counsel appearing for the petitioner submits that the petitioner was appointed vide order dated 23.1.95 (Annexure A/1) as Assistant Teacher on the pay scale of Rs. 1200-2040/- in accordance with the circular dated 10.6.94 (See 18.6.94) (Annexure A/4). Accordingly, the petitioner who happens to be the grand son of the widow of the deceased employee, namely, Sakluram was given compassionate appointment. Subsequently, vide order dated 28.7.98 (Annexure A/1), the appointment of the petitioner was cancelled in view of the circular dated 10.9.95 (Annexure R/5). The circular dated 10.9.95 provided that the appointment of other relations, namely, grand daughter, son-in-law,

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brother-in-law, brother, sister, nephew, niece, daughter-in-law, sister-in-law etc. was not in accordance with law. Therefore, appointment made after 3.1.95 on the compassionate basis should be declared as illegal and be accordingly cancelled.

2. Mr. A.K. Prasad, learned counsel appearing for the petitioner submits that it is well settled that the circular or the rule or any other statutory provision including the rules framed under Article 309 of the Constitution of India, cannot be given the retrospective effect to take away the rights accrued in favour of the government employee. In support of his contention, he has relied on a decision of the Supreme Court in the case of **P. Tulsi Das and others vs. Govt. of A.P. and others** (2003) 1 SCC 364.

3. Per contra, Mr. V.V.S. Murthy, learned Deputy Advocate General with Ms. Deepali Pandey, learned Panel lawyer appearing for the respondents submits that the appointment of the petitioner is even otherwise illegal and the retrospective effect can be given to the circular dated 10.6.94.

4. I have heard learned counsel appearing for the parties and perused the pleadings and documents appended thereto. It is evident that the appointment of the petitioner on the post of Assistant Teacher vide order dated 23.1.95 was in accordance with the circular dated 10.6.94 (Annexure A/4). Clause 17 of the circular dated 10.6.94 reads as under:-

"मृत शासकीय सेवक की विधवा का कोई वयस्क पुत्र या पुत्री उसकी देखभाल करने के लिए न हो और वह स्वयं भी शासकीय सेवा करने के लिए सक्षम न हो तो उसे अधिकार होगा कि वह किसी ऐसे अन्य नजदीकी रिश्तेदार को नियुक्ति के लिए नामांकित कर सकेगी जो उसकी देखभाल कर सके। ऐसा नामांकन उसके द्वारा हलफनामे पर करना होगा। "

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5. The Supreme Court in the case of **P. Tulsi Das and others (supra)** observed as under:-

> "14.....Consequently, we are unable to agree that the legislature could have validly denied those rights acquired by the appellants retrospectively not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be valid in its operation "no futuro" cannot be held valid insofar as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them....."

6. The circular dated 10.9.95 (Annexure R/5) declaring all the appointments not in accordance with law has been issued without any basis, with retrospective effect. The circular, in view of settled position of law as stated above, cannot take away the rights of the petitioner, which has accrued on account of his appointment in accordance with the circular dated 10.6.94.

7. As a result and for the reasons aforestated, this petition is allowed. No order as to costs.

B/-

Sd/-
Satish K. Agnihotri
Judge